BLM Energy Reforms
Questions and Answers

Q: <u>What action is the Bureau of Land Management (BLM) announcing today?</u>

A: The BLM is finalizing its draft policies announced in January that are designed to ensure environmental protection of important natural resources on BLM lands while aiding in orderly leasing and development of oil and natural gas resources.

First, the BLM is finalizing the oil and gas leasing policy. The policy requires its state offices to conduct a more detailed environmental review prior to leasing oil and natural gas resources. The BLM will now engage the public in the development of Master Leasing Plans (MLP) before leasing in certain areas where significant new oil and gas development is anticipated. The intent is to fully consider other important natural and cultural resource values before making a decision on leasing and development in these areas.

In addition, this new leasing policy creates a comprehensive parcel review process that takes a site-specific approach to individual lease sales. Each potential lease sale will undergo increased internal and external coordination, public participation, and interdisciplinary review of available information. The BLM will ensure Resource Management Plan (RMP) conformance and incorporation of BLM national, state, and local guidance, as well as conduct site visits to parcels, when necessary, to supplement or validate existing data.

The policy is expected to make oil and gas leasing more predictable, increase certainty for stakeholders including industry, and restore needed balance to the development process.

Second, the BLM is finalizing policy on the implementation of section 390 of the Energy Policy Act of 2005, which established five categorical exclusions to streamline the environmental review process for permitting of certain oil and gas exploration and development activities.

Q: <u>Why is the BLM changing its leasing policy?</u>

A: At the outset, it is important to emphasize that the Department of the Interior and the BLM are committed to improving a process that, by all appearances, is broken. Of all the oil and gas parcels identified for lease nationwide last year, 49 percent were protested and, of those, more than half had to be withdrawn from leasing. By contrast, just over 1 percent of the parcels offered in 1998 were protested.

As we seek to reverse this trend, we are focusing on the development of new processes that will make oil and gas leasing more predictable, increase certainty for stakeholders including industry, and restore needed balance to the development process.

Our efforts are intended to achieve the multiple-use balance statutorily required in the management of public lands, while honoring our commitment to balanced development of the

Nation's conventional energy resources. That commitment includes the appropriate development of coal, oil, and natural gas development on U.S. public land.

Q: How will this change the existing oil and gas leasing process?

A: Leasing reform will take a fresh look at land use plan leasing allocations and at individual parcels before the lease sale. It will improve protections for land, water, and wildlife, and reduce potential conflicts that can lead to costly and time-consuming protests and litigation of leases.

State offices will continue to respond to expressions of interest from the oil and gas industry in leasing particular parcels, but will also strategically plan for leasing and development in unleased areas that have the potential for oil and gas development.

State offices will continue to hold lease sales four times per year, as required by the Mineral Leasing Act. However, they will also develop a leasing sales schedule with an emphasis on rotating lease parcel review responsibilities among field offices throughout the year to balance the workload and to allow each field office sufficient time and resources to devote to implementing the parcel review policy.

Q: Won't this new policy just pile on additional and redundant reviews to an already burdensome leasing process?

A: Leasing reform will present an increased opportunity for public participation and a more thorough environmental review process and documentation that can help reduce the number of protests filed, as well as enhance the BLM's ability to resolve protests before lease sales.

Where existing environmental analysis and data are adequate, the BLM will rely on that analysis and data rather than conducting redundant analysis and data collection.

The consequence of not following this front-loaded process in the past has been significant protests and appeals, coupled with judicial restraints on development, job loss, and diminished access to energy resources. Taking a closer, more thoughtful look at parcels before they are offered for lease is critical to ensuring environmentally responsible development and reducing protests and appeals. Instead of the BLM investing vast amounts of staff time and attention to defending lawsuits and addressing protests after the fact, our goal is to take responsible action in advance.

Q: What are MLPs?

A: This policy introduces the Master Leasing Plan (MLP) as a mechanism for carrying out additional planning, analysis, and decisionmaking for oil and gas leasing and eventual development.

An MLP would be prepared for certain areas where oil and gas development is likely and before any significant amount of the area is leased in order to further refine and/or establish conditions for such leasing. The MLP process would take a closer look at Resource Management Plan (RMP) decisions pertaining not only to leasing, but to development, as well. Therefore, in most cases, the MLP analysis will be conducted through the plan amendment or plan revision process.

An MLP will only be required when all of the following criteria are met:

- A substantial portion of the area to be analyzed in the MLP is not currently leased.
- There is a majority Federal mineral interest.
- The oil and gas industry has expressed a specific interest in leasing, and there is a moderate or high potential for oil and gas confirmed by the discovery of oil and gas in the general area.
- Additional analysis or information is needed to address likely resource or cumulative impacts if oil and gas development were to occur where there are—
  - multiple-use or natural/cultural resource conflicts;
  - impacts to air quality;
  - impacts on the resources or values of any national park, national wildlife refuge, or National Forest wilderness area, as determined after consultation or coordination with the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), or the U.S. Forest Service; or
  - impacts on other specially designated areas.

The following resource issues will be considered in addition to other issues of local importance in developing MLPs:

- Ambient air quality and potential impacts, including cumulative impacts, to air quality from development.
- The effect of oil and gas leasing on lands that the BLM may identify as having wilderness characteristics and lands with special designations such as lands within the National Landscape Conservation System and Areas of Critical Environmental Concern.
- Special Recreation Management Areas.
- Nearby state, tribal, or other Federal agency lands, including NPS and FWS lands that could be adversely affected by BLM-authorized oil and gas development.
- Important cultural resources, including traditional cultural properties of importance to Native American tribes.
- Paleontological resources.
- Fisheries and wildlife habitat, migration corridors, and rare plants.
- Status of visual resource inventories and appropriate designations of Visual Resource Management Classes.
- Watershed conditions, steep slopes, and fragile soils.
- Municipal watersheds and aquifers.
- Public health and safety (e.g., management of fluids and emissions).

- The ability to achieve interim and final reclamation standards (Gold Book, Chapter 6).

A range of actions can be taken by decisionmakers following consideration of these issues, such as closing an area to leasing, applying new lease stipulations, phasing leasing and development, or applying certain best management practices to development.

Q: <u>What kind of additional scrutiny will areas proposed for leasing receive?</u>

A: Field offices will form Interdisciplinary Parcel Review Teams (IDPR Teams) of resource specialists to review lease sale parcels and ensure compliance with the National Environmental Policy Act (NEPA) and other legal and policy requirements. In light of changing resource values, new information, and current policy, IDPR Teams will conduct site visits, as needed, to areas proposed for leasing to supplement or validate existing data in order to make informed leasing recommendations.

Categorical Exclusions

Q: <u>What action is the Bureau of Land Management announcing today?</u>

A: The BLM's new policy includes a review for "extraordinary circumstances" that staff must screen proposed projects against when considering the use of any of the categorical exclusions established in section 390 of the Energy Policy Act of 2005.

By requiring the extraordinary circumstances review—which is already associated with agency-established categorical exclusions—before the use of these statutory categorical exclusions, the BLM will ensure that actions that could result in significant negative impacts to threatened and endangered species, historic or cultural resources, or human health and safety, for example, are sufficiently analyzed.

Q: <u>What are categorical exclusions under NEPA?</u>

A: Under the CEQ's regulations implementing NEPA, Federal agencies may take action on certain categories of proposed actions without conducting environmental reviews, so long as no extraordinary circumstances exist.

Under the CEQ's regulations, categorical exclusions are categories of actions that a Federal agency has determined do not have a significant effect on the quality of the human environment (individually or cumulatively). If an agency concludes that a proposed project falls within a category of activities the agency has already determined do not have significant environmental effects, the agency generally does not need to prepare an environmental assessment or environmental impact statement for the activity; rather, it need only review the particular action for "extraordinary circumstances" to confirm that the particular action does not itself have significant effects.

Q: Why is this policy on categorical exclusions needed? What is the problem the new policy is intended to correct?

A: The categorical exclusions at issue here were established by Congress in section 390 of the Energy Policy Act of 2005.

Section 390 established five new categorical exclusions for oil and gas development, and the BLM issued guidance to its offices in 2005 stating that CEQ's regulations regarding "extraordinary circumstances" did not apply to the use of these categorical exclusions. This guidance was heavily criticized by conservation groups, Western leaders, and members of Congress.

In September 2009, the Government Accountability Office issued a report finding a lack of clarity in the Energy Policy Act of 2005 language establishing these categorical exclusions and inconsistency in their use on the part of BLM field offices. The report recommended that the BLM (1) issue detailed and specific guidance on the use of the section 390 categorical exclusions; (2) provide standardized templates or checklists to be used when relying on each of the five section 390 categorical exclusions, specifying the documentation required to justify their application; and (3) develop and implement a plan for overseeing the use of these categorical exclusions to ensure compliance with both law and guidance.

Q: What are extraordinary circumstances? Can you provide an example?

A: When an agency establishes a categorical exclusion under the CEQ's regulations implementing NEPA, it must also provide for extraordinary circumstances——that is, circumstances under which an otherwise excluded action would require preparation of an EA or EIS.

The Department of the Interior's list of extraordinary circumstances includes, for example, situations in which a proposed action may result in significant impacts to threatened and endangered species, historic or cultural resources, or human health and safety.

If an extraordinary circumstance exists, the BLM may not use an agency-established categorical exclusion but must prepare an EA or EIS. Under BLM's new policy, if an extraordinary circumstance exists with respect to a proposed action, the BLM may not use any of the categorical exclusions established by section 390 of the Energy Policy Act, either.

Q: How does the new policy address the concerns raised by the Government Accountability Office (GAO), the Congress, and the Public over the BLM's use of the Energy Policy Act categorical exclusions?

A: Four primary issues have also been raised by the public and Congress and the GAO regarding the BLM's interpretation of the language of the Act: (1) whether use of categorical exclusion (CX)2 must be based on previous NEPA analysis, (2) whether use of CX3 could be based solely on a general land use plan or its associated NEPA documentation, (3) whether oil and gas development complies with the approved land use plan and is within the range of environmental effects of oil and gas development analyzed in the land use plan, and (4) whether to require a review of extraordinary circumstances prior to applying section 390 CXs.

The BLM will issue 2 CX policies. The first will address issues identified by the public and by Congress. The second policy will be issued later in the summer and will address issues identified in the GAO report.

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